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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/822,301

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James J. Leskiewicz

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EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

06/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/822,301	Applicant(s) LESKOWICZ ET AL.	
	Examiner Lorna M. Douyon	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 9-30, 35-40, 45-52 and 55-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 9-30, 35-40, 45-52, 55-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. This action is responsive to the amendment filed on March 24, 2008.

2. Claims 1-4, 9-30, 35-40, 45-52, 55-71 are pending.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-4, 9-30, 35-40, 45-52, 55-71 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation "reduces the surface tension of the composition to less than 35 dynes/cm" in claim 1, line 6; claim 2, line 7; and claim 62, line 7 is nowhere supported in the specification and is therefore considered as new matter. Applicants allege that the support is found on page 5, paragraphs 0015 and 0018, however, these paragraphs do not mention a surface tension of less than 35 dynes/cm, rather, less than 40 dynes/cm in paragraph 0018.

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5. Claims 1-4, 15-18, 23-26, 37-40, 47-52, 55-56, 66-67 stand rejected under 35 U.S.C. 102(b) as being anticipated by Michael (US Patent No. 5,540,864) for the reasons set forth in the previous office action.

6. Claims 1-4, 11-12, 15-18, 23-30, 37-40, 47-52, 55-56, 66-68 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neumiller et al. (US Patent No. 5,849,681), hereinafter "Neumiller '681" for the reasons set forth in the previous office action.

7. Claims 9-10, 13-14, 19-22, 35-36, 45-46, 57-58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neumiller '681 as applied to the above claims, and further in view of Neumiller (US Patent No. 5,716,921), hereinafter "Neumiller '921" for the reasons set forth in the previous office action.

8. Claims 1-4, 11-12, 15-18, 23-30, 37-40, 47-52, 55-56, 59-60, 62-63, 65-71 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cummings (EP 0,527,625) for the reasons set forth in the previous office action.

9. Claims 11-12, 27-30, 35-36, 69 and 70 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Michael as applied to the above claims for the reasons set forth in the previous office action.

10. Claims 9-10, 13-14, 19-22, 45-46, 57-58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Michael as applied to the above claims, and further in view of "Neumiller '921" for the reasons set forth in the previous office action.

11. Claims 9-10, 13-14, 19-22, 35-36, 45-46, 57-58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cummings as applied to the above claims, and further in view of "Neumiller '921" for the reasons set forth in the previous office action.

12. Claims 1-4, 11-12, 15-18, 23-30, 37-40, 47-52, 55-56, 59-71 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Conway (WO 99/11123) for the reasons set forth in the previous office action.

13. Claims 9-10, 13-14, 19-22, 35-36, 45-46, 57-58 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Conway as applied to the above claims, and further in view of Neumiller (US Patent No. 5,716,921), hereinafter "Neumiller '921" for the reasons set forth in the previous office action.

14. Claims 59-65, 68, and 71 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Michael as applied to the above claims, and further in view of Conway for the reasons set forth in the previous office action.

15. Claims 59-65 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Neumiller '681 as applied to the above claims, and further in view of Conway for the reasons set forth in the previous office action.

16. Claims 61 and 64 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cummings as applied to the above claims, and further in view of Conway for the reasons set forth in the previous office action.

Response to Arguments

17. Applicants' arguments filed March 24, 2008 have been fully considered but they are not persuasive.

With respect to the anticipation rejection of claims 1-4, 15-18, 23-26, 37-40, 47-52, 55-56, 66-67 based upon Michael, Applicants argue that the solvent in Formula 6, i.e., propylene glycol monobutyl ether, which the examiner relied upon as anticipating the claimed composition, serves only to reduce surface tension of the composition to 36 dynes/cm. And thus, Applicants argue that Michael does not teach the claimed low volatile solvent or recognize any criticality in providing a combination of components as claimed to achieve the claimed VOC content in a cleaning composition.

The Examiner respectfully disagrees with the above arguments because they are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972). Applicants have not provided any showing that said

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.propylene glycol monobutyl ether reduces surface tension of the composition to 36 dynes/cm.

As stated in the previous office action, Michael teaches, in Formula No. 6, col. 12, lines 29-45, an aqueous, liquid hard surface detergent composition which comprises 0.18 wt% Cocoamidopropyl-dimethyl-2-hydroxy-3-sulfopropylbetaine (amphoteric surfactant); 0.02 wt% Sodium Alkyl ($-C_{13}$) Sulfate (anionic surfactant); 0.5 wt% monoethanolamine; 3.0 wt% propylene glycol monobutylether (which inherently possess a limited solubility in water and reduces surface tension of the composition as those recited); 3.0 wt% isopropanol and balance deionized water and minors. The volatile organic compound (VOC) content of this composition is 3.0 wt% (due to the isopropanol). Hence, Michael teaches each of the limitations of the instant claims and the anticipation rejection is maintained.

With respect to the obviousness rejection of claims 1-4, 11-12, 15-18, 23-30, 37-40, 47-52, 55-56, 66-68 based upon Neumiller '681, Applicants argue that it would not have been obvious to one of ordinary skill in the art at the time of the invention to incorporate an amphoteric surfactant or the combination of anionic and amphoteric surfactants as asserted by the examiner to adjust the surface tension of the composition as taught by Neumiller '681 and obtain applicants' claimed composition, and that the examiner's assertion is possible only through hindsight of knowing applicants' desirable combination.

In response to applicants' argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In col. 5, lines 40-48, Neumiller '681 teaches that the aqueous glass cleaning composition may also contain one or more surfactants to adjust the surface tension of the composition which includes anionic surfactants and amphoteric surfactants.

With respect to the obviousness rejection of claims 9-10, 13-14, 19-22, 35-36, 45-46, 57-58 based upon Neumiller '681 in view of Neumiller '921, Applicants reassert the ground of distinctions as set forth above as to Neumiller '681, and Neumiller '921 does not make up for each of the shortcomings of Neumiller '681.

The response to Neumiller '681 above applies here as well. Neumiller '921 is relied upon in his teachings of disodium cocoamphodipropionate as the specific amphoteric surfactant, in an analogous art. Hence, the combination of Neumiller '681 with Neumiller '921 is proper and is maintained.

With respect to the obviousness rejection of claims 1-4, 11-12, 15-18, 23-30, 37-40, 47-52, 55-56, 59-60, 62-63, 65-71 based upon Cummings, Applicants argue that Cummings does not teach or suggest a cleaning composition including an amphoteric surfactant in combination with the claimed VOC content and the claimed defined solvent, i.e., a low-volatile non-VOC evaporative organic solvent that has limited solubility in water of less than 20% and reduces surface tension of the composition to

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less than 35 dynes/cm. Applicants also argue that no suggestion is present to one skilled in the art to selectively modify these elements to provide the properties claimed to achieve the composition as claimed.

The Examiner respectfully disagrees with the above arguments because, as already stated in the previous office action, Cummings teaches each of the ingredients having overlapping proportions as those required in the present claims, hence, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a glass cleaning composition comprising ethylene glycol monohexyl ether, surfactant mixture like amphoteric surfactant and anionic surfactant, water, and cosolvent in their optimum proportions because the teachings of Cummings at least in page 3, lines 47-50; page 4, lines 47-51; and claim 1, encompass these combination of ingredients and proportions.

With respect to the obviousness rejection of claims 11-12, 27-30, 35-36, 69 and 70 based upon Michael, Applicants reassert the ground of distinctions as set forth above to Michael.

The response to Michael above applies here as well.

With respect to the obviousness rejection of claims 9-10, 13-14, 19-22, 45-46, 57-58 based upon Michael in view of Neumiller '921, Applicants reassert the grounds of distinction as set forth above as to Michael with regard to independent claim 1 and claim 2. Applicants further argue there is no suggestion to select only isolated parts from the various components and amounts disclosed in Michael in view of the lack of recognition of criticality as to the combination of components as claimed by applicants.

The response to Michael above applies here as well. Neumiller '921 is relied upon in his teachings of disodium cocoamphodipropionate as the specific amphoteric surfactant, in an analogous art. Hence, the combination of Michael with Neumiller '921 is proper and is maintained.

With respect to the obviousness rejection of claims 9-10, 13-14, 19-22, 35-36, 45-46, 57-58 based upon Cummings in view of "Neumiller '921", Applicants reassert the grounds of distinction as set forth above as to Cummings with respect to independent claims 1 and 2, and Neumiller '921 does not make up for the shortcomings of Cummings.

The response to Cummings above applies here as well. Neumiller '921 is relied upon in his teachings of disodium cocoamphodipropionate as the specific amphoteric surfactant, in an analogous art. Hence, the combination of Cummings with Neumiller '921 is proper and is maintained.

With respect to the obviousness rejection of claims 1-4, 11-12, 15-18, 23-30, 37-40, 47-52, 55-56, 59-71 based upon Conway, Applicants argue that there is no guidance or suggestion to pick or choose select components and select amounts to achieve a defined VOC content in order to achieve the particular combination claimed by applicants.

The Examiner respectfully disagrees with the above arguments because, as already stated in the previous office action, Conway teaches each of the ingredients having overlapping proportions as those recited in the present claims. Applicants have

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not provided any showing of criticality with respect to their specific ingredients having specific proportions when compared to similar components as those taught by Conway.

With respect to the obviousness rejection of claims 9-10, 13-14, 19-22, 35-36, 45-46, 57-58 based upon Conway in view of Neumiller (US Patent No. 5,716,921), Applicants resubmit the grounds for distinction as set forth above as to Conway and Neumiller '921 regarding claims 1 and 2, upon which the above claims are dependent.

The responses to Conway and Neumiller '921 above apply here as well.

With respect to the obviousness rejection of claims 59-65, 68, and 71 based upon Michael in view of Conway, the rejection of claims 59-65 based upon Neumiller '681 in view of Conway, the rejection of claims 61 and 64 based upon Cummings in view of Conway, Applicants argue that each of Michael, Conway, Neumiller '681, Cumminngs does not disclose the invention as claimed as set forth above.

The responses to Michael, Conway, Neumiller '681, Cumminngs above apply here as well.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/
Primary Examiner, Art Unit 1796